Supreme Court, U.S.
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No. 96 - 524

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

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L. KEITH YOHN, D.D.S.,
*Petitioner,*

V.

BOARD OF REGENTS, on behalf of
THE UNIVERSITY OF MICHIGAN, et al.,
*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO
MICHIGAN COURT OF APPEALS

# PETITIONER'S REPLY BRIEF

L. KEITH YOHN, D.D.S.
1100 HILL STREET
ANN ARBOR, MICHIGAN 48104
TELEPHONE: (313) 663 - 4200
pro se

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L. KEITH YOHN, D.D.S.,
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**On Petition For A Writ of Certiorari To Michigan Court of Appeals**

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# PETITIONER'S REPLY BRIEF

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NOW comes the Petitioner, L. Keith Yohn, D.D.S., pro se, and says the Respondents' arguments in their brief in opposition to the Petition for a writ of Certiorari are infirm for the following reasons.

## I. The Court Should Grant The Petition Because The State Courts Decline To Properly Adjudicate The Petitioner's; Taking Of A Contract And Property Rights Without Compensation Claim Involving Public Policy.

The Respondents argue, "... the issue is a simple state law breach of contract claim ...." (Respondents brief p 2). The respondents are misguided because in the area of public employment this Court has held that a public college professor summarily dismissed with 13 other college professors from college appointments held under tenure provisions, *Slochower v Board of Education*, 350 US 551, 76 S.Ct.637, 100 L.Ed. 692 (1956), and a college professor with de facto tenure, *Perry v Sindermann*, 408 US 593, 92 S. Ct. 2694, 33 L. Ed.2d 570 (1972); and college professors and staff members dismissed during the terms of their contracts *Wieman v Updegraff* , 344 US 183, 73 S.Ct. 215, 97 L. Ed. 216 (1952) and a teacher hired without tenure or a formal contract, but nonetheless with a clearly implied promise of continued employment, *Connell v Higginbotham*, 408 US 207, 91 S.Ct.1772, L.Ed. 418 (1971) have a property right to continued employment that is safeguarded by the due process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution.

Thus, to put it as plainly as possible, the United States Supreme Court teaches that a professor in public employment possesses a vested property right to continued employment safeguarded by due process which can be created by an implied promise, a contract, de facto tenure or a written tenure provision. The present case before the Court involves a written tenure provision.

One of the questions before the Court is: What are the dimensions of the Petitioner's property rights ?

There can be no dispute that this is a property right case and Respondents' argument that this is a simple state law breach of contract issue must fail. The Court should grant the Petition for a writ of Certiorari.

## II. The Court Can Exercise Jurisdiction Over This Case Under 28 U. S. C. Sec. 1257(a).

The Respondents argue that this Court lacks jurisdiction under 28 U.S.C. 1257(a). (Respondents brief pp 2-3). This argument must fail for two reasons:

A. The Supreme Court Case Selection Act (Public Law 100 - 352) passed by Congress in 1988, amended the Section 1257 statute. The amendment struck out the old contents and a fresh Section 1257 was enacted. The amendment abolished the, "for want of a substantial federal question" language and gave the Court full discretionary power, with no strings attached, to grant Certiorari to state court cases with important public interest issues.

The authority cited by the Respondents to support their argument, Moore's Federal Practice Second Edition, was last published in 1966, twenty-two (22) years before the 1988 Supreme Court Case Selection Act was passed by Congress. This Act renders Professor Moore's 1966 commentary on Section 1257 invalid. Hence, Professor Moore's commentary is irrelevant for the purpose of this Court's jurisdictional powers.

B. The present case before the Court bristles with Federal civil rights issues under the Fifth, Ninth and Fourteenth Amendments of the United States Constitution.

At issue is the Petitioner's Count I , Fifth amended complaint; "taking of a contract and property rights without compensation" claim. (Petition p 12). Some of the Federal questions involved are: (1) Did the Petitioner receive due process before the privation of his protected, vested property rights in the terms of his University Appointment with Tenure? (2) Has the Petitioner received due process in the state courts ? (3) Can the State of Michigan "take" the Petitioner's vested property rights without "just compensation " ?

This Court held in *Williamson Co. Regional Planning Comm. v Hamilton Bank of Jackson City* , 473 US 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985) that litigants in the States of Tennessee and Michigan must first seek compensation under those State's "inverse condemnation doctrine" before pursuing Federal civil rights issues under 42 U.S.C. Sec 1983 claims. The Court said:

> [A] taking claim is not ripe until plaintiff has sought compensation through state procedures. Similarly, lower federal courts have followed suit requiring that a plaintiff first obtain a final decision from the governmental entity that is alleged to have taken property without just compensation and utilize the state procedures for obtaining just compensation before the plaintiff's Section 1983 claim will be considered ripe for adjudication. also see, *Electro - Tech, Inc v H.F. Campbell Co.*, 433 Mich 37, 445 NW2d 61 (Mich 1989); *Bigelow v Michigan Department of Natural Resources*, 970 F2d 154 (6th Cir. 1992).

*Peterman v DNR*, 446 Mich 177 (1994).

The Petitioner has complied with this Court's rule in *Williamson Co. Regional Planning Comm.* supra., by seeking a remedy in Michigan's state courts. The Petitioner presented this same argument to the Michigan Court of Appeals in his Brief on Appeal question V, A. The Petitioner has not received compensation for the privation of his protected, vested property rights because the state courts decline to review the law in the case. Thereby ,putting the Petitioner in a "deep-freeze".

The Court should exercise its supervisory powers under Supreme Court Rule 10 and set aside judgment for the Respondents and order the lower courts to address the law in the case.

For the preceding discussed reasons, this Court can exercise jurisdiction over this case under 28 U. S. C. Sec. 1257(a).

## III. The Court Should Grant The Petition Because The Section Of Rule 10 Quoted By The Respondents Does Not Preclude The Court From Granting Certiorari.

The Respondents argue that the; "Petitioner complains that the trail judge misapplied the rule of inverse condemnation, misapplied Michigan Court Rules ...." (Respondents brief p 4).

The Petitioner shows the Court that the Petitioner complains of the trial judge's **noncompliance** with court rules and the **failure** of the appellate court to review the law in the case. (Petition pp i, 13-15).

In a motion for summary disposition, Michigan Court Rule 2.116(10) states: "Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

When the Court reviews the transcript of the proceedings for Respondents' summary disposition motion held on August 24, 1992, (t pp 7-14). The Court will find that the trial judge made no findings of material fact. The Respondents did not offer the court expert testimony, learned treatise or any other law to support their motion.

The Petitioner offered the court *Petition of Mackey, State Highway Commission v Flanders,* 5 Mich App 572 (1967); *Delaval v United States,* 284 US 61 (1931); *Electro - Tech v H. F. Campbell Co.,* 433 Mich 57 (1989) supra.; *General Motors v United States,* 323 US 373 (1945) to rebut the Respondents" motion.

How can the trial judge misapply the Petitioner's inverse condemnation doctrine theory when the Respondents offered the court no law to misapply the doctrine on ?

Thus, Supreme Court Rule 10 does not preclude the Court from granting the Petition for a writ of Certiorari.

## IV. The Court Should Grant The Petition Because The Respondents Are Not Being Truthful In Pointing Out Misstatements In The Petition Under Supreme Court Rule 15.2 .

The Respondents state; "Moreover, as required by Supreme Court Rule 15.2, Respondents point out numerous misstatements contained in the Petition as follows:" (Respondents brief p 4).

The Respondents cite only five (5) alleged misstatements in the Petition. (Respondents brief pp 4-5). The Petitioner shows the Court that the Respondents are duping the Court, i.e. The Respondents state: "... Respondents presented no exhibits to the trial court...." (Respondents brief p 5). The trial transcript shows the Respondents placed into evidence Defendants' Exhibits #s 1,3,5,11,13,14,15, 16,17,20,24,29,30,46 and 65.

This example shows the Court that the Respondents are not being forthright and straightforward with the Court. Thereby, the Respondents loose their credibility.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

L. Keith Yohn, DDS

L. Keith Yohn, D.D.S.

pro se

Date: November 7, 1996.